

Good morning ladies and gentlemen.

28 June 2007

My name is Susan Ouellette. I served 20 years in the United States Air Force. I am a Disabled Veteran and receive VA Disability pay. I have been paying close attention to AB 243 as some day it could affect me. If my husband were to divorce me, a WI Circuit Court Judge could decide that my husband should get half of my disability pay. This scares me! Especially since my VA disability pay is protected by Title 38 Chapter 53 of the US Code which ensures non-assignability of Veteran's Benefits and Title 10 Chapter 71 of the US Code explaining Computation Armed Forces disposable Retired Pay in compliance with court orders.

Title 38 states the portion of Military Retired pay I receive and then wave (meaning to forfeit) to accept disability pay cannot be assigned or apportioned to anyone except a US government agency.

Title 10 Chapter 71, Section 1408 of the US Code defines "Disposable Retired Pay" in a divorce. It states that disposable Military Retired pay that can be considered in a divorce is total monthly Military Retired pay minus the amount waved (forfeited) in order to receive VA disability pay.

The Uniformed Services Former Spouses' Protection Act (USFSPA) states that any amount the veterans Military Retired pay that was waved to accept VA Disability pay CANNOT be counted as disposable income in a divorce.

A recent change in Federal Law now allows certain veterans who have served 20 years or more and are rated 50 to 100% disabled may now receive both Military Retired pay and VA Disability pay. However, for the veteran that is forced out of the military before reaching the 20 years due to a disability cannot receive full Military Retired pay if he/she wants the VA disability pay. This means a disabled veteran may receive 10 – 100% VA disability pay, but the Military Retirement pay is reduced by the VA percentage.

Imagine our current soldiers in the Middle East. Some come home with arms and legs blown off or traumatic brain injury from the IED's and are now disabled veterans. The wife or husband decides they want to get a divorce. Is it right to take half of this disabled veterans compensation and give it to the person that wants out of the marriage? NO!!!

From what I have seen in meeting other divorced veterans in WI, the Circuit Court Judges are clearly ignoring and violating the Federal Law. Some of the male veterans have become homeless because of this. I see them suffer with many and varied disabilities. For a judge to come along and take half his lively hood away when it is protected by Federal Law is just a slap in the face. This has to stop! Don't let our judges continue to violate Federal Laws that are supposed to protect Disabled Veterans who have served our country so selflessly.

This bill is not asking that you take away child support in a divorce. It is asking that we stop allowing greedy ex-spouses from benefiting from our Disabled Veterans compensation.

Please support AB 243. You must protect our veterans from being stripped of their compensation that is given for their sacrifices.

I have submitted partial copies of Title 10, Title 38 and the Uniformed Services Former Spouses Protection Act for you to read.

Thank you very much for considering this very important bill.



Susan M. Ouellette, USAF, Ret.

Life Member Disabled American Veteran

Cell Phone 920-916-1824

From the U.S. Code Online via GPO Access [wais.access.gpo.gov]  
[Laws in effect as of January 7, 2003]  
[Document not affected by Public Laws enacted between January 7, 2003 and  
February 12, 2003]  
[CITE: 10USC1408]

## **TITLE 10--ARMED FORCES**

### **Subtitle A--General Military Law**

#### **PART II--PERSONNEL**

#### **CHAPTER 71--COMPUTATION OF RETIRED PAY**

##### **Sec. 1408. Payment of retired or retainer pay in compliance with court orders**

- (4) The term "disposable retired pay" means the total monthly retired pay to which a member is entitled less amounts which—
- (A) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;
  - (B) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38; ←
  - (C) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or
  - (D) are deducted because of an election under chapter 73 of this title to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.

*TITLE 38 IS VETERANS BENEFITS*

From the U.S. Code Online via GPO Access [wais.access.gpo.gov]

[Laws in effect as of January 7, 2003]

[Document not affected by Public Laws enacted between January 7, 2003 and February 12, 2003]

[CITE: 38USC5301]

## **TITLE 38--VETERANS' BENEFITS**

### **PART IV--GENERAL ADMINISTRATIVE PROVISIONS**

#### **CHAPTER 53--SPECIAL PROVISIONS RELATING TO BENEFITS**

##### **Sec. 5301. Nonassignability and exempt status of benefits**

- (a) Payments of benefits due or to become due under any law administered by the Secretary shall not be assignable except to the extent specifically authorized by law, and such payments made to, or on account of, a beneficiary shall be exempt from taxation, shall be exempt from the claim of creditors, and shall not be liable to attachment, levy, or seizure by or under any legal or equitable process whatever, either before or after receipt by the beneficiary. The preceding sentence shall not apply to claims of the United States arising under such laws nor shall the exemption therein contained as to taxation extend to any property purchased in part or wholly out of such payments. The provisions of this section shall not be construed to prohibit the assignment of insurance otherwise authorized under chapter 19 of this title, or of servicemen's indemnity. For the purposes of this subsection, in any case where a payee of an educational assistance allowance has designated the address of an attorney-in-fact as the payee's address for the purpose of receiving a benefit check and has also executed a power of attorney giving the attorney-in-fact authority to negotiate such benefit check, such action shall be deemed to be an assignment and is prohibited.
- (b) This section shall prohibit the collection by setoff or otherwise out of any benefits payable pursuant to any law administered by the Secretary and relating to veterans, their estates, or their dependents, of any claim of the United States or any agency thereof against (1) any person other than the indebted beneficiary or the beneficiary's estate; or (2) any beneficiary or the beneficiary's estate except amounts due the United States by such beneficiary or the beneficiary's estate by reason of overpayments or illegal payments made under such laws to such beneficiary or the beneficiary's estate or to the beneficiary's dependents as such. If the benefits referred to in the preceding sentence are insurance payable by reason of yearly renewable term insurance, United States Government life insurance, or National Service Life Insurance issued by the United States, the exemption provided in this section shall not apply to indebtedness existing against the particular insurance contract upon the maturity of which the claim is based, whether such indebtedness is in the form of liens to secure unpaid premiums or loans, or interest on such premiums or loans, or indebtedness arising from overpayments of dividends, refunds, loans, or other insurance benefits.
- (c) (1) Notwithstanding any other provision of this section, the Secretary may, after receiving a request under paragraph (2) of this subsection relating to a veteran, collect by offset of any compensation or pension payable to the veteran under laws administered by the Secretary the uncollected portion of the amount of any indebtedness associated with the veteran's participation in a plan prescribed in chapter 73 of title 10. (2) If the Secretary concerned (as defined in section 101(5) of title 37) has tried under section 3711(a) of title 31 to collect an amount described in paragraph (1) of this subsection in the case of any veteran, has been unable to collect such amount, and has determined that the uncollected portion of such amount is not collectible from amounts payable by that Secretary to the veteran or that the veteran is not receiving any payment from that Secretary, that Secretary may request the Secretary to make collections in the case of such veteran as authorized in paragraph (1) of this subsection. (3)(A) A collection authorized by paragraph (1) of this subsection shall be conducted in accordance with the procedures prescribed in section 3716 of title 31 for administrative offset collections made after attempts to collect claims under section 3711(a) of such title. (B) For the purposes of subparagraph (A) of this paragraph, as used in the second sentence of section 3716(a) of title 31-- (i) the term



## **UNIFORMED SERVICE'S FORMER SPOUSES PROTECTION ACT**

### **USFSPA**

There is much confusion as to military entitlements and benefits of a former spouse under the USFSPA.

#### **Frequently Asked Questions**

*Q. What constitutes "disposable" retired pay for division in a divorce?*

A. "Disposable" retired pay is defined in 10 U.S. Code, Section 1408(a) (4) of P.L. 97-252, as amended by P.L. 99-661, Nov. 14, 1986 and Section 555 of P.L. 101-510, Nov. 5, 1990.

Disposable retired pay is the gross monthly pay entitlement, including renounced pay, less authorized deductions.

For divorce, dissolution of marriage, annulments, and legal separations that become effective on or after Feb. 3, 1991, the authorized deductions are:

- (a) Amounts owed to the United States for previous overpayments of retired pay and the recoupments required by law resulting from entitlement to retired pay.
- (b) Forfeitures of retired pay ordered by court-martial.
- (c) Amounts waived in order to receive compensation under Title 5 or 38 of USC.
- (d) Premiums paid as a result of an election under 10 U.S. Code Chapter 73 to provide an annuity to a spouse or former spouse to whom payment of a portion of such member's retired pay is being made pursuant to a court order.
- (e) The amount of the members retired pay under 10 U.S. Code Chapter 61 computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list).

## LEGAL ACTION OF WISCONSIN, INC.

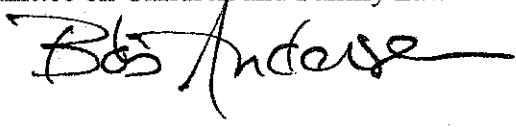
### MADISON OFFICE

*Serving Columbia, Dane, Dodge, Green, Iowa, Jefferson, Lafayette, Rock and Sauk Counties*

31 South Mills Street, Madison, Wisconsin 53715

Phone (608) 256-3304 Toll-free (800) 362-3904 Fax (608) 256-0510 Web [www.legalaction.org](http://www.legalaction.org)

TO: Assembly Committee on Children and Family Law

FROM: Bob Andersen 

RE: Assembly Bill 243, Relating to: prohibiting consideration of veterans disability payments when ordering maintenance.

DATE: June 28, 2007

Legal Action of Wisconsin, Inc. (LAW) is a nonprofit organization funded by the federal Legal Services Corporation, Inc., to provide legal services for low income people in 39 counties in Wisconsin. LAW provides representation for low income people across a territory that extends from the very populous southeastern corner of the state up through Brown County in the east and La Crosse County in the west. Family Law is one of the three major priority areas of law for our delivery of legal services (the other two are public benefits and housing). As a result, our organization has been extensively involved in family law issues over the years.

We are not unmindful of the sacrifices and services that veterans have made or provided for our country, or of the modest to low incomes that many veterans have -- in fact many people receiving only veterans benefits are clients of our services -- but we have a difficult time supporting AB 243, because of some of the inequities it would create.

I think that part of the impetus for the bill is the U.S. Supreme Court decision in Mansell v. Mansell, which decided that veterans disability benefits could not be separated from veterans service benefits. The two benefits are lumped together in a single check. While this was the decision of the court, it does not prohibit a state from considering VA income of a person in deciding how much maintenance should be awarded.

Our concerns with the bill are as follows:

1. **This would create an inequity between veterans disability benefits and social security disability benefits.**

Social security benefits (SSDI) would continue to be considered as income for maintenance determinations. This would be unfair as people who receive social security disability benefits are found to be totally disabled, where people receiving veteran's benefits may be partially disabled to totally disabled. The result would be that a person



GREEN BAY - Brown, Calumet, Door, Kewaunee, Manitowoc and Outagamie Counties Phone (920) 432-4645 Toll-free (800) 236-1127 Fax (920) 432-5078

LA CROSSE - Buffalo, Crawford, Grant, Jackson, Juneau, La Crosse, Monroe, Richland, Trempealeau and Vernon Counties Phone (608) 785-2809 Toll-free (800) 873-0927 Fax (608) 782-0800

MIGRANT PROJECT - Statewide Phone (608) 256-3304 Toll-free (800) 362-3904 Fax (608) 256-0510

MILWAUKEE - Milwaukee and Waukesha Counties Phone (414) 278-7722 Toll-free (888) 278-0633 Fax (414) 278-7126

OSHKOSH - Adams, Fond du Lac, Green Lake, Marquette, Ozaukee, Sheboygan, Washington, Waushara and Winnebago Counties Phone (920) 233-6521 Toll-free (800) 236-1128 Fax (920) 233-0307

RACINE - Kenosha, Racine and Walworth Counties Phone (262) 635-8836 Toll-free (800) 242-5840 Fax (262) 635-8838

who was receiving social security who was *totally disabled* from working would have his/her benefits included in setting maintenance payments, while another who was only partially disabled would have his/her benefits completely exempt, solely because the source of the benefits for the disability was veterans benefits.

2. **If this exemption is made, it could lead to the exemption of other disability benefits in the future .**

Veteran's disability payments are given for disabled veterans and are meant to replace the income that is lost due to a disability. It is income replacement. If VA disability benefits are exempted from maintenance, this could lead to other disability benefits being exempted in the future – social security, worker's compensation, private disability insurance through an employer. The exclusion of these sources of income can be unfair where the obligor has a significant income otherwise.

3. **Veterans benefits are not granted based on low income, like SSI disability benefits – a recipient may well otherwise have significant resources.**

SSI disability benefits are exempt from the income considered in maintenance orders, because the person who would be paying is poor and unable to work. A person receiving veterans benefits may well not be poor and may still be able to work. This becomes particularly a concern for couples who have been married for many years and who have jointly shared this income down through the years.

4. **The statutes already protect against abuses being made where it is not equitable to grant maintenance based on veterans benefits or where the obligor has little other income to support himself or herself.**

Section 767.56 clearly makes the granting of maintenance *completely discretionary* with the court and lists several factors that must be considered before maintenance may be ordered. It is our experience that it is very difficult to convince the courts to award maintenance in divorce cases as a rule in low income cases even where there has been a long term marriage - or, at best, the courts will order a small amount of maintenance for a short time to give the non-working spouse a chance to find employment. The statute lists several factors to be considered:

- length of the marriage
- age and physical and emotional health of the parties
- division of property
- educational level of each party at the time of the marriage and the time the

- action is commenced
- earning capacity of the person seeking maintenance, including educational background, training, work experience, employment skills, length of absence from the job market, custodial responsibilities for the children, and the time and expense necessary to acquire sufficient education or training to find appropriate employment.
- the feasibility that the person seeking maintenance can become self supporting at a standard of living comparable to that enjoyed during the marriage, and, if so, the length of time necessary to achieve this goal.
- tax consequences to each party
- any mutual agreement made by the parties before or during the marriage, according to terms of which one party has made a financial or service contributions to the other with expectations of reciprocity or other compensation in the future, where the repayment or compensation has not been made, or any mutual agreement concerning any arrangement for the financial support of the parties.
- the contribution by one party to the education, training or increased earning power of the other.
- such other factors as the court may in each case determine to be relevant.

5. **Purpose of maintenance is to provide support for a recipient spouse in accordance with the need and earning capacity of the parties and to ensure a fair and equitable financial agreement between the parties -- it is measured by the lifestyle that existed before the divorce that the two could have anticipated enjoying had they stayed married; exclusion of maintenance works a hardship where the parties were married for many years and the couple depended together on the veterans benefits as a big part of their income.**

It is not fair to exempt this income in all cases. Each situation should be determined on a case-by-case analysis. For instance, consider the case where the husband and wife have been married for a long time - 25 years. The VA benefits are the parties only source of income and have been for 25 years. Both parents were at home - one the disabled vet, the other the person who has raised 3 children (who are now adults) and who has taken care of the disabled vet. The vet decides to divorce the other spouse. Now that spouse, who has been out of the work force for 25 years because that is the arrangement that was made during their marriage, would be left with no maintenance because he/she cannot ask the court to consider the VA benefits, the only source of income for the family, as income for purposes of a maintenance order.



June 28, 2007

Mr. Chairman and members of the Committee, my name is Charles Vandenplas; I am the State Commander of the Disabled American Veterans (DAV) Department of Wisconsin. On behalf of the more than 20,000 members of the DAV of Wisconsin, I wish to express my appreciation for this opportunity to present our views on the matter of divorce and compensation. Mr. Chairman, the DAV is an organization devoted to the interests of serviced connected veterans. The DAV has devoted itself to a single purpose: "building better lives for our nation's disabled veterans". My purpose here today, is that some of the rights of our fellow disabled veterans are being violated.

Several judges are clearly ignoring and violating federal law. According to Title 38, United States

Code 38, Chapter 52 Veterans Administration.

A non-assignable should not be considered property as those benefits are intended to compensate a person for his or her lost income or earnings capacity.

I would like this committee to be aware that this problem is only going to get worse. With the current conflicts in the world, our returning veterans both men and women are coming back with disabilities. They will be returning with physical and emotional problems, I feel that they should not have the added stress of knowing half of their VA compensation could be taken away because a judge does not follow Federal Law.

The DAV believes that these veterans, men and women earned this compensation. They earned it with their blood, broken bodies and their minds, it belongs to them and to them alone. That's why I am here today.

In closing I would like for this committee to be aware that for the third year in a row, the DAV has passed a resolution at our State Convention to support this legislation, (AB 243). I will enclose copy of this resolution with my statement.

Thank you for giving me the opportunity to express our views as the DAV Department of Wisconsin, we feel that supporting AB 243 is the correct thing to do.

Page-4

Thank you,

Charles Vandenplas

Disable American Veterans

Commander State of Wisconsin

**RESOLUTION 2007-04**

**Divorce and Compensation**

*WHEREAS*, several judges requires the property of spouses be divided at the time of a divorce; *and*

*WHEREAS*, a presumption of property is to be divided equally between the spouses and a number of factors will determine the amount of maintenance payments a spouse should receive; *and*

*WHEREAS*, a veteran's compensation should not considered to be divisible property as those benefits are intended to compensate a person for his or her lost income or earning capacity; *and*,

*WHEREAS*, according to Title 38, United States Code, Chapter 52, Veterans Administration Compensation is considered a non-assignable benefit

***THEREFORE, BE IT RESOLVED*** at the Disabled American Veterans, Department of Wisconsin, assembled in State Convention at Green Bay, Wisconsin, June 8-9, 2007, that VA Compensation is not considered divisible property at the time of a divorce.

*Respectfully Submitted,*

Clarence Stoel

Legislative Director

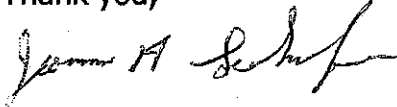
To the Committee on Children and Family Law,

6/28/07

I am unable to attend the hearing today due to medical reasons. I wish my statement to be read by a fellow Disabled American Veteran.

This bill is very important to me and many other Disabled Veterans. Thank you for your consideration.

Thank you,



James A. Schaefer  
E5997 County Rd. BB  
Manawa, WI 54949  
Phone 920-596-2364  
Life Member Disabled American Veteran  
Life Member Military Order of the Purple Heart



Good Morning,

6/28/2007

My name is Jim Schaefer. I was medically retired from the United States Army after serving honorably for 7 years, 3 of which were in Vietnam as a Combat Medic. I received numerous combat injuries and exposure to Agent Orange. In 1972, the Department of Defense (DOD) deemed me unfit for duty. At the time of my medical retirement, the DOD awarded me 30% retirement pay.

Prior to my discharge from the Army the Veterans Administration service connected 7 of my disabilities at 0%. It took me over 20 years of non-stop examinations and denials to finally receive an increase in my disability and to service connect my on-going disabilities through the VA. In later years when I was rated at 100% I had to wave (give up) my Army retirement pay in order to receive the VA disability pay and benefits. Since I do not have 20 years of service, I do not receive any retirement pay from the Army.

While I was married, my former wife would not care for my medical and physical needs. I required more assistance than she was willing to give me. She worked a job as a normal person. At the time of my divorce when the judge took half of my VA Disability pay, awarding it to my former wife as maintenance, he explained that he was following the current WI law. My argument at the time was that Federal Laws protected me and that the WI Circuit Court could not supersede the Federal Laws regarding VA Disability paid to the veteran for compensation. He completely ignored the Federal Laws.

My divorce took place in Waupaca County, Judge Hoffmann presiding. This how the judge worded it and I quote "The court can not conclude from what has been presented to the court that payments can be allocated directly from the petitioner's benefits. The court will order that it be done if it can be done so that payments will be submitted to the respondent on a regular basis directly from this petitioner's benefit. If that can not be accomplished through the benefit program, then payments should be made through the Wisconsin Trust System". Unquote. The judge ordered that I pay her maintenance for the rest of my life. Which I felt was very unfair and completely against Federal Law.

SO IN OTHER WORDS, it appears that this judge had questions regarding assignability under the current WI law. It is very apparent that if he knew Title 38 and Title 10 of the US Code, he would not have said this.

The laws that protect the Retired Military Personnel and Disabled Veterans are as follows:

Title 38 Veterans' Benefits, Chapter 53, Nonassignability of Benefits. It clearly states that Veterans Disability pay CANNOT be assigned to anyone except for a US Government agency.

Title 10 Armed Forces, General Military Law, Chapter 71, Computation of Retired Pay, Payment of retired pay in compliance with court orders. This title defines "disposable retired pay" as an amount that excludes VA disability pay. In other words, VA disability pay cannot be considered as income in a divorce.

Since I was ordered by the judge to give my ex-spouse ½ of my VA Disability pay I have had to cancel numerous Dr. appointments due to the fact that I cannot afford the gas for the 2 hour drive to Tomah VA.

I am on oxygen and have had multiple strokes. I have to walk with the aid of a cane and need help just getting dressed, not to mention all the things I can no longer do without the aid of someone else.

I am also a severe diabetic (caused by Agent Orange) and I cannot afford to purchase the proper foods, such as fresh fruit, vegetables and sugar substitute due to the loss of my VA disability pay that my ex-wife gets. After I pay my bills, I have approximately \$300.00 to spend on food, clothing, gasoline and other necessities. Since I am a House Bound veteran, I have had to depend on family and friends on many occasions to help me through the month and I also rely on them to take me to Dr. appointments and do my shopping.

I am so financially strapped that I cannot afford an appeal of the Circuit Court Judge's decision to assign half my VA disability pay to my ex-wife.

When I die, my ex-wife is entitled to NOTHING. She will no longer have half of my VA Disability Compensation to have a personal trainer at the fitness center or have the extra money to travel the country any time she feels like it. My question to you is,,,,, why should she be living on my VA disability now when I am struggling just to survive?

The military is becoming more non-gender every day. More females are assuming the duties that the male counterparts used to perform. As a result, more females are returning with more disabilities also. The current WI law as it stands now will also put the female veterans at risk of losing half their VA disability during a divorce.

Last year I received a letter from the State Bar Association, indicating that they were opposed to AB-50, last year's bill on this subject, because they are comparing it to other groups such as police, firefighters, and EMT's.



Please do not confuse this Veterans' issue with police, firefighters and EMT retirement issues. The State Bar was trying to cloud the issue by including these careers, which have nothing to do with Disabled Veterans. The Disabled Veteran is cared for and paid by the Federal Government. Whereas the police, firefighters, and some EMT's are paid by the State of Wisconsin and are allowed under current law to keep their entire retirement pay and receive disability pay. The Disabled Veteran who could not serve a full 20 years due to combat injuries must give up all the military retirement pay, dollar for dollar in order to receive VA Disability pay and benefits.

The representative of the State Bar Association that testified last year at this public hearing said he did not understand what "waived retirement pay" meant.

I have researched the State Bar Associations web site and found Title 10 of the US Code listed through their site, which explains in detail what "disposable retired pay" and "waiver of retired pay" means. It means I do NOT get my Army retirement pay anymore. I only receive my VA disability for injuries incurred in combat. My ex-wife does not suffer my disabilities.

On behalf of all my disabled brothers and sisters in arms, I am asking that you please support AB 243 and stop this injustice against the Disabled Veterans.

Thank you,



James A. Schaefer, USA, Ret.

E5997 County Rd. BB

Manawa, WI 54949

Phone 920-596-2364

Life Member Disabled American Veteran

Life Member Military Order of the Purple Heart

